

Update: Child Protective Proceedings Benchbook

CHAPTER 5

Time & Notice Requirements

Insert new Section 5.18 at the end of Chapter 5.

5.18 Special Provisions for Incarcerated Parties

In addition to the procedures for notification of noncustodial parents,* special procedures must be followed when one of the parties to a child protective proceeding is incarcerated. Effective January 1, 2003, MCR 2.004 requires specific actions be undertaken in cases involving incarcerated parties.

*See Section 5.8 (Special Notice Provisions for Noncustodial Parents).

A. Applicability

MCR 2.004 applies to:

“(1) domestic relations actions involving minor children, and

“(2) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights,

in which a party is incarcerated under the jurisdiction of the Department of Corrections.” MCR 2.004(A)(1)–(2).

B. Responsibility of the Party Seeking an Order

Under MCR 2.004(B), a party seeking an order regarding a minor child must do the following:

“(1) contact the department to confirm the incarceration and the incarcerated party’s prison number and location;

“(2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and

“(3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party’s prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule.” MCR 2.004(B)(1)–(3).

C. Responsibility of the Court

Once a party has completed the foregoing requirements to the court’s satisfaction, MCR 2.004(C) requires the court to:

“issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner’s name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.”

The purpose of this telephone call is to determine the following:

“(1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,

“(2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party’s access to the court is protected,

“(3) whether the incarcerated party is capable of self-representation, if that is the party’s choice,

“(4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and

“(5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the

incarcerated party may participate.” MCR 2.004(E)(1)–(5).

D. Documentation and Correspondence to Incarcerated Party

MCR 2.004(D) requires all court documents or correspondence mailed to the incarcerated party to include the name and prison number of the incarcerated party on the envelope.

E. Denial of Relief and Sanctions

MCR 2.004(F)–(G) provide:

“(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call, or if the court determines that immediate action is necessary on a temporary basis to protect the minor child.”

“(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.”